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IN THE

Supreme Court of the United States

October Term, 1957.

No. 238.

SAMUEL KRASNOV, ET AL.,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the United States District Court for the Eastern District of Pennsylvania.

PETITION FOR REHEARING.

C. BREWSTER RHOADS,
1421 Chestnut Street,
Philadelphia 2, Pa.,
Attorney for Appellants.

Of Counsel:

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 238.

JOSEPH KRASNOV, ET AL.,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PETITION FOR REHEARING.

Pursuant to Rule 58 of the Rules of this Court, appellants Krasnov petition for rehearing of the order entered October 14, 1957, granting appellee's motion to affirm.

The ground of this Petition is that appellants were effectively precluded by the single District Court judge from establishing their factual defenses to the complaint and the right to plenary review of that judge's rulings was foreclosed by the operation of the Expediting Act.

This civil action by the United States under the anti-trust laws was presented to a single District Court judge on appellee's (plaintiff's) motion for summary judgment. As described in the Jurisdictional Statement, appellants were effectively precluded from presenting affidavits in opposition to the motion except in the form of an offer of

proof. Then, instead of permitting appellants to introduce evidence in support of their offer, the judge decided the motion in favor of appellee by making findings which conflict with the offer of proof and by drawing from the material supporting the motion only those inferences which favor the moving party. Thus, appellants were not afforded even that hearing contemplated by the summary judgment procedure.

In the usual case, appellants would have pursued their right to review by the Court of Appeals. However, since this case falls within the Expediting Act, review could be obtained only by filing a Jurisdictional Statement in this Court. In the present appeal, the purpose of the Jurisdictional Statement was merely to show that this Court had jurisdiction and that the questions were substantial.[1] Plainly, the submission of a Jurisdictional Statement is in no sense equivalent to the filing of a brief and oral argument on the merits either in the Court of Appeals or in this Court.[2]

Summary judgment was intended to eliminate trials where there are no genuine factual issues, and the Expediting Act was designed to ensure prompt and final review of matters of great public importance. Their application in this case, however, deprived appellants of the sort of hearing demanded by the most essential notions of fairness. Here, on motion for summary judgment, appellants had only an incomplete hearing before a single judge in the District Court and none at all in the Court of Appeals. Their final and only opportunity to expose the errors below and obtain a full hearing was denied by the Rules of this Court which did not permit the initial filing of a brief on the merits and

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1. Rule 15 of the Rules of the Supreme Court of the United States.

2. Appellants also filed a brief in reply to appellee's motion to affirm. The purpose of this brief was the same as that of the Jurisdictional Statement.

by the decision of this Court summarily affirming. A realistic appraisal of these circumstances demonstrates conclusively that appellants have not had "a day in court."

For these reasons appellants request that this Court vacate its order entered October 14, 1957, and either: (1) note probable jurisdiction and set the case down for oral argument; or (2) remand the case to the District Court with instructions that appellants be allowed to file affidavits under Rule 56(e) in support of their offer of proof and thereafter to argue anew appellee's motion for summary judgment.

In the alternative appellants request that paragraph VI(C) be deleted from the Final Judgment. That paragraph enjoins appellants from granting to a retail customer special discounts, advertising allowances or return privileges which are not available to others on proportionately equal terms. This relief is not justified by the complaint even if taken to be true; the allegations relating to the subject are covered by other terms of the judgment; and there is no finding on this point in the opinion of the Court below. The impropriety of this portion of the judgment will be amplified in the Petition for Rehearing to be filed by The Comfy Manufacturing Company and Fred Katzner.

Respectfully submitted,

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Attorney for Appellants.

Of Counsel:

Joseph W. Swain, Jr.,
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Certificate.

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.

C. BREWSTER RHOADS,
Attorney for Appellants.